

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 780 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SAJAN ARJAN TRANSFER AS R.3 AS PER CT'S ORDER

Versus

RAMA KARSAN

Appearance:

MR JC GOHIL for Petitioners
MR AJ SHASTRI for Respondent No. 1
MR YS LAKHANI for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 02/02/98

ORAL JUDGEMENT

This Revision Application has been filed by the original defendants No.2 and 3 Jetha Arjan and Madasi Arjan respectively against the judgment and order of the learned Asstt. Judge, Junagadh dated 30.6.1990 whereby the learned Judge set aside the judgment passed by learned Jt.Civil Judge (JD), Porbandar dated 4.6.1992.

below Exhs.5 and 33 and directed the plaintiffs to leave 4 feet way towards western side of their fields and similarly, defendants No.2 and 3 were directed to leave 4 feet way towards the eastern side of their fields. The plaintiffs and the defendants No.2 and 3 were also ordered to allow defendant No.11 to use cart way for going to his field. Plaintiffs are brothers cultivating their land along with their father. Their land is towards the western side of the fields of defendants No.1,2 and 3 and the land of defendants No.1,2 and 3 are on one line. It is alleged that defendant No.1 is a high-headed person and he intends to create a new in their field even though defendant No.1 has got no right or easement right to pass and repass from his field. It is also alleged that defendant No.1 is trying to make cart way in their field and causing damage to their crops. There is a well in the field of defendant No.1 towards southern side and the way is starting from the wall of defendant No.1 and it goes towards the field of defendants No.2 and 3. In fact, there is no way in the field of the plaintiffs. Defendant No.1, in his reply stated that the fields of plaintiffs originally belong to one owner and the plaintiffs and he himself had purchased the land from the original owner. When he had purchased the said land on 30.4.74 by registered sale deed, he had right to way in the field of the plaintiffs. He has also submitted that he has no other way, and therefore, is claiming right of way of easement of necessity. He further submitted that the plaintiffs had cultivated their cart way under the guise of interim injunction. Defendants No.2 and 3 each of them filed separate reply. According to them, there is no such cart way in the field and the way for defendant No.1 is from the field of the plaintiff only. Defendant No.3 also gave a reply almost on the same line. Defendant No.1 also filed application below Exh.33 seeking injunction and in alternative, prayed that the plaintiffs and defendants No.2 and 3 be ordered to give him cart way from their field. The application Exh.5 filed by defendant No.1 and application Exh.33 were heard by the trial court. Both the applications were rejected. Hence the matter was taken in Appeal. Relying on the documents produced by various parties and the affidavit filed, the Court found that there is prima facie case against defendant No.1, and therefore, passed order dated 30.6.1992 as stated above

2. It is contended that the learned Judge has misread the evidence and there is nothing to show that defendant No.1 has the right of way.

3. I have gone through the judgment passed by the

Courts below. There is nothing to show that there is any error in the judgment passed by the Asstt. Judge, Junagadh, much less, error of jurisdiction. Thus, there is no merit in this Revision Application.

4. In view of the aforesaid, there is no merit in this Revision Application and the same is accordingly rejected. Rule discharged. Interim relief is vacated.

4.2.98 [N N Mathur, J]

msp.